

Suspend the Rules and Pass the Bill, HR. 1252, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

110TH CONGRESS
1ST SESSION

H. R. 1252

To protect consumers from price-gouging of gasoline and other fuels, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2007

Mr. STUPAK (for himself, Mr. BOUCHER, Mr. ENGEL, Mr. ALLEN, Ms. SCHAKOWSKY, Mr. MARKEY, Mr. DOYLE, Ms. BALDWIN, Mr. HILL, Ms. HOOLEY, Mr. WEINER, Mr. ROSS, Ms. HARMAN, Mr. MCHUGH, Mr. ETHERIDGE, Mr. FRANK of Massachusetts, Ms. HERSETH, Mr. ACKERMAN, Mr. BAIRD, Mr. BISHOP of New York, Mr. KILDEE, Mr. BOSWELL, Mr. DEFazio, Mr. BRADY of Pennsylvania, Mr. CARNEY, Ms. KILPATRICK, Mr. OBERSTAR, Ms. CLARKE, Mrs. NAPOLITANO, Mr. CLEAVER, Ms. MCCOLLUM of Minnesota, Mr. COHEN, Mr. CONYERS, Mr. DAVIS of Illinois, Mr. CUMMINGS, Mr. FARR, Mr. VISCLOSKY, Mr. FATTAH, Mr. BERRY, Mr. FILNER, Mr. GRIJALVA, Mr. HARE, Mr. HIGGINS, Ms. SUTTON, Ms. HIRONO, Mr. HOLDEN, Mr. CARNAHAN, Mr. HOLT, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. LANTOS, Ms. LINDA T. SÁNCHEZ of California, Mr. LIPINSKI, Mr. LYNCH, Mrs. MCCARTHY of New York, Mrs. CHRISTENSEN, Mr. BERMAN, Mr. MCGOVERN, Mr. McNULTY, Mr. TAYLOR, Mrs. MALONEY of New York, Ms. MATSUI, Ms. LORETTA SANCHEZ of California, Mr. MICHAUD, Mr. TIERNEY, Mr. GEORGE MILLER of California, Mr. ALTMIRE, Mr. PATRICK J. MURPHY of Pennsylvania, Ms. BORDALLO, Mr. PASCRELL, Ms. SCHWARTZ, Mr. SERRANO, Mr. UDALL of Colorado, Mr. WEXLER, Mr. CAPUANO, Ms. BERKLEY, Ms. WOOLSEY, Mr. NADLER, and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect consumers from price-gouging of gasoline and other fuels, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Price Gouging
5 Prevention Act”.

6 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE AND**
7 **OTHER PETROLEUM DISTILLATES DURING**
8 **EMERGENCIES.**

9 (a) UNCONSCIONABLE PRICING.—

10 (1) IN GENERAL.—It shall be unlawful for any
11 person to sell, at wholesale or at retail in an area
12 and during a period of an energy emergency, gaso-
13 line or any other petroleum distillate covered by a
14 proclamation issued under paragraph (2) at a price
15 that—

16 (A) is unconscionably excessive; and

17 (B) indicates the seller is taking unfair ad-
18 vantage of the circumstances related to an en-
19 ergy emergency to increase prices unreasonably.

20 (2) ENERGY EMERGENCY PROCLAMATION.—

21 (A) IN GENERAL.—The President may
22 issue an energy emergency proclamation for any

1 area within the jurisdiction of the United
2 States, during which the prohibition in para-
3 graph (1) shall apply. The proclamation shall
4 state the geographic area covered, the gasoline
5 or other petroleum distillate covered, and the
6 time period that such proclamation shall be in
7 effect.

8 (B) DURATION.—The proclamation—

9 (i) may not apply for a period of more
10 than 30 consecutive days, but may be re-
11 newed for such consecutive periods, each
12 not to exceed 30 days, as the President de-
13 termines appropriate; and

14 (ii) may include a period of time not
15 to exceed 1 week preceding a reasonably
16 foreseeable emergency.

17 (3) FACTORS CONSIDERED.—In determining
18 whether a person has violated paragraph (1), there
19 shall be taken into account, among other factors—

20 (A) whether the amount charged by such
21 person for the applicable gasoline or other pe-
22 troleum distillate at a particular location in an
23 area covered by a proclamation issued under
24 paragraph (2) during the period such proclama-
25 tion is in effect—

1 (i) grossly exceeds the average price
2 at which the applicable gasoline or other
3 petroleum distillate was offered for sale by
4 that person during the 30 days prior to
5 such proclamation;

6 (ii) grossly exceeds the price at which
7 the same or similar gasoline or other pe-
8 troleum distillate was readily obtainable in
9 the same area from other competing sellers
10 during the same period;

11 (iii) reasonably reflected additional
12 costs, not within the control of that person,
13 that were paid, incurred, or reasonably an-
14 ticipated by that person, or reflected addi-
15 tional risks taken by that person to
16 produce, distribute, obtain, or sell such
17 product under the circumstances; and

18 (iv) was substantially attributable to
19 local, regional, national, or international
20 market conditions; and

21 (B) whether the quantity of gasoline or
22 other petroleum distillate the person produced,
23 distributed, or sold in an area covered by a
24 proclamation issued under paragraph (2) dur-
25 ing a 30-day period following the issuance of

1 such proclamation increased over the quantity
2 that that person produced, distributed, or sold
3 during the 30 days prior to such proclamation,
4 taking into account usual seasonal demand vari-
5 ations.

6 (b) FALSE PRICING INFORMATION.—It shall be un-
7 lawful for any person to report to a Federal agency infor-
8 mation related to the wholesale price of gasoline or other
9 petroleum distillates with actual knowledge or knowledge
10 fairly implied on the basis of objective circumstances that
11 such information is false or misleading.

12 (c) DEFINITIONS.—As used in this section—

13 (1) the term “wholesale”, with respect to sales
14 of gasoline or other petroleum distillates, means ei-
15 ther truckload or smaller sales of gasoline or petro-
16 leum distillates where title transfers at a product
17 terminal or a refinery, and dealer tank wagon sales
18 of gasoline or petroleum distillates priced on a deliv-
19 ered basis to retail outlets; and

20 (2) the term “retail”, with respect to sales of
21 gasoline or other petroleum distillates, includes all
22 sales to end users such as motorists as well as all
23 direct sales to other end users such as agriculture,
24 industry, residential, and commercial consumers.

1 (d) CONSTRUCTION.—As described in this section, a
2 sale of gasoline or other petroleum distillate does not in-
3 clude a transaction on a futures market.

4 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
5 **SION.**

6 (a) ENFORCEMENT BY FTC.—A violation of section
7 2 shall be treated as a violation of a rule defining an un-
8 fair or deceptive act or practice prescribed under section
9 18(a)(1)(B) of the Federal Trade Commission Act (15
10 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
11 shall enforce this Act in the same manner, by the same
12 means, and with the same jurisdiction as though all appli-
13 cable terms and provisions of the Federal Trade Commis-
14 sion Act were incorporated into and made a part of this
15 Act. In enforcing section 2(a) of this Act, the Commission
16 shall give priority to enforcement actions concerning com-
17 panies with total United States wholesale or retail sales
18 of gasoline and other petroleum distillates in excess of
19 \$500,000,000 per year.

20 (b) CIVIL PENALTIES.—

21 (1) IN GENERAL.—Notwithstanding the pen-
22 alties set forth under the Federal Trade Commission
23 Act, any person who violates this Act with actual
24 knowledge or knowledge fairly implied on the basis

1 of objective circumstances shall be subject to the fol-
2 lowing penalties:

3 (A) PRICE GOUGING; UNJUST PROFITS.—

4 Any person who violates section 2(a) shall be
5 subject to—

6 (i) a fine of not more than 3 times the
7 amount of profits gained by such person
8 through such violation; or

9 (ii) a fine of not more than
10 \$3,000,000.

11 (B) FALSE INFORMATION.—Any person
12 who violates section 2(b) shall be subject to a
13 civil penalty of not more than \$1,000,000.

14 (2) METHOD.—The penalties provided by para-
15 graph (1) shall be obtained in the same manner as
16 civil penalties obtained under section 5 of the Fed-
17 eral Trade Commission Act (15 U.S.C. 45).

18 (3) MULTIPLE OFFENSES; MITIGATING FAC-
19 TORS.—In assessing the penalty provided by sub-
20 section (a)—

21 (A) each day of a continuing violation shall
22 be considered a separate violation; and

23 (B) the court shall take into consideration,
24 among other factors, the seriousness of the vio-
25 lation and the efforts of the person committing

1 the violation to remedy the harm caused by the
2 violation in a timely manner.

3 **SEC. 4. CRIMINAL PENALTIES.**

4 (a) IN GENERAL.—In addition to any penalty appli-
5 cable under section 3, any person who violates section 2
6 shall be fined under title 18, United States Code—

7 (1) if a corporation, not to exceed
8 \$150,000,000; and

9 (2) if an individual not to exceed \$2,000,000,
10 or imprisoned for not more than 10 years, or both.

11 (b) ENFORCEMENT.—The criminal penalty provided
12 by subsection (a) may be imposed only pursuant to a
13 criminal action brought by the Attorney General or other
14 officer of the Department of Justice.

15 **SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
16 **NEYS GENERAL.**

17 (a) IN GENERAL.—A State, as *parens patriae*, may
18 bring a civil action on behalf of its residents in an appro-
19 priate district court of the United States to enforce the
20 provisions of section 2(a) of this Act, or to impose the
21 civil penalties authorized by section 3(b)(1)(B), whenever
22 the attorney general of the State has reason to believe that
23 the interests of the residents of the State have been or
24 are being threatened or adversely affected by a violation

1 of this Act or a regulation under this Act, involving a re-
2 tail sale.

3 (b) NOTICE.—The State shall serve written notice to
4 the Federal Trade Commission of any civil action under
5 subsection (a) prior to initiating such civil action. The no-
6 tice shall include a copy of the complaint to be filed to
7 initiate such civil action, except that if it is not feasible
8 for the State to provide such prior notice, the State shall
9 provide such notice immediately upon instituting such civil
10 action.

11 (c) AUTHORITY TO INTERVENE.—Upon receiving the
12 notice required by subsection (b), the Federal Trade Com-
13 mission may intervene in such civil action and upon inter-
14 vening—

15 (1) be heard on all matters arising in such civil
16 action; and

17 (2) file petitions for appeal of a decision in such
18 civil action.

19 (d) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this section
21 shall prevent the attorney general of a State from exer-
22 cising the powers conferred on the attorney general by the
23 laws of such State to conduct investigations or to admin-
24 ister oaths or affirmations or to compel the attendance

1 of witnesses or the production of documentary and other
2 evidence.

3 (e) VENUE; SERVICE OF PROCESS.—In a civil action
4 brought under subsection (a)—

5 (1) the venue shall be a judicial district in
6 which—

7 (A) the defendant operates;

8 (B) the defendant was authorized to do
9 business; or

10 (C) the defendant in the civil action is
11 found;

12 (2) process may be served without regard to the
13 territorial limits of the district or of the State in
14 which the civil action is instituted; and

15 (3) a person who participated with the defend-
16 ant in an alleged violation that is being litigated in
17 the civil action may be joined in the civil action with-
18 out regard to the residence of the person.

19 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
20 ACTION IS PENDING.—If the Federal Trade Commission
21 has instituted a civil action or an administrative action
22 for violation of this Act, no State attorney general, or offi-
23 cial or agency of a State, may bring an action under this
24 subsection during the pendency of that action against any
25 defendant named in the complaint of the Federal Trade

1 Commission or the other agency for any violation of this
2 Act alleged in the complaint.

3 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
4 tained in this section shall prohibit an authorized State
5 official from proceeding in State court to enforce a civil
6 or criminal statute of such State.

7 **SEC. 6. LOW INCOME ENERGY ASSISTANCE.**

8 Amounts collected in fines and penalties under sec-
9 tion 3 of this Act shall be deposited in a separate fund
10 in the treasury to be known as the Consumer Relief Trust
11 Fund. To the extent provided for in advance in appropria-
12 tions Acts, the fund shall be used to provide assistance
13 under the Low Income Home Energy Assistance Program
14 administered by the Secretary of Health and Human Serv-
15 ices.

16 **SEC. 7. EFFECT ON OTHER LAWS.**

17 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
18 MISSION.—Nothing in this Act shall be construed to limit
19 or affect in any way the Federal Trade Commission's au-
20 thority to bring enforcement actions or take any other
21 measure under the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.) or any other provision of law.

23 (b) STATE LAW.—Nothing in this Act preempts any
24 State law.